UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

L.S. STARRETT CO., INC.	)	
	)	
Plaintiff,	)	
v.	)	CIVIL ACTION NO. 10-cv-11467-FDS
	)	
SEARS ROEBUCK AND CO.,	)	Hon. Dennis F. Saylor
	)	
Defendant.	)	

DEFENDANT'S MOTION TO DISMISS OR,
ALTERNATIVELY, TRANSFER VENUE

Defendant, Sears, Roebuck and Co. ("Sears"), respectfully moves this Court, pursuant to Federal Rule of Civil Procedure 12(b)(6) and 28 U.S.C. § 1404(a), for an order dismissing this action or, alternatively, transferring it to the Northern District of Illinois.

As discussed more fully in Defendant's supporting memorandum, this action should be dismissed or, alternatively, transferred to the Northern District of Illinois pursuant to a written forum selection clause providing that:

> **12.10 Governing Law; Jurisdiction and Venue.**
>
> This Agreement and the rights and obligations of the parties hereunder shall be governed by and interpreted, construed and enforced in accordance with the laws of the State of Illinois, without regard to its principles of conflicts of laws.
>
> Seller irrevocably submits to venue and exclusive personal jurisdiction in the federal and state courts in Cook County, Illinois for any dispute arising out of this Agreement, and waives all objections to jurisdiction and venue of such courts.

The Court is authorized under Federal Rule 12(b)(6) to dismiss this action for plaintiff's failure to file the lawsuit in the agreed upon forum. Alternatively, 28 U.S.C. § 1404(a) permits the Court to transfer this action based on the convenience of parties and other factors.

As discussed more fully in Defendant's supporting memorandum, Plaintiff's complaint fails for the separate and additional reason that its claim is not recognized under well-established Illinois law. The written contract terms provide that Defendant is not responsible for purchasing goods from Plaintiff unless Defendant issues a written purchase order. However, Plaintiff seeks to have the Court interpret the "implied covenant of good faith and fair dealing" to impose on Defendant an obligation to purchase additional goods. This claim contradicts the express terms of the written contract, and is not recognized under well-established Illinois law. Accordingly, Plaintiff's claim should be dismissed.[1]

WHEREFORE, defendant Sears, Roebuck and Co. respectfully requests that the Court enter an order dismissing this action or, alternatively, transferring it to the United States District Court for the Northern District of Illinois, and for any other relief that is appropriate under the circumstances.

Dated: September 27, 2010

Respectfully submitted,
SEARS, ROEBUCK AND CO,
By its Attorneys,

/s/ Paul E. White

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[1] Plaintiff alleges that it has been the exclusive manufacturer of Sears' Craftsman® tape measures since 1987, and that is it variously referred to as L.S. Starrett Co., Inc., Evans Rule, Evans-Starrett, Evans Rule-Starrett. (Compl., ¶ 3.) Defendant does not concede the truth of these allegations, lacks information about the true identity and present corporate structure of Plaintiff, and reserves all of its rights.

CERTIFICATE OF SERVICE

I, Paul E. White, hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on September 27, 2010.

/s/ Paul E. White

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